

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEMRY CORPORATION,

Plaintiff,

v.

KENTUCKY OIL TECHNOLOGY, N.V.,
PETER BESSELINK, MEMORY METALS
HOLLAND, B.V.,

Defendants.

Case No. C04-03843 RMW (HRL)

**ORDER RE: KOT'S MOTION FOR A
PROTECTIVE ORDER**

Re: Docket No. 371

KENTUCKY OIL TECHNOLOGY, N.V.,

Counterclaimant,

v.

MEMRY CORPORATION and
SCHLUMBERGER TECHNOLOGY
CORPORATION,

Counterdefendants.

Kentucky Oil Technology ("KOT") moves, on shortened time, for an order (1) preventing Memry Corporation ("Memry") and Schlumberger Technology Corporation ("STC") from together taking more than ten depositions without leave of court, (2) establishing the remaining number of depositions that KOT may take, and (3) preventing the deposition of

1 Barrie Hart from going forward until all parties are guaranteed sufficient time to examine him.
2 Memry and STC oppose the motion. The matter has been deemed appropriate for submission
3 without a hearing.

4 The court ORDERS that:

- 5 1. Memry and STC are on the same "side" in the action. Thus, under the Federal
6 Rules of Civil Procedure, they are limited to a total of ten depositions absent a
7 written stipulation or a court order finding good cause to exceed ten total
8 depositions. FED. R. CIV. P. 30(a)(2)(A); Advisory Comm. Notes to 1993
9 Amendments to FED. R. CIV. P. 30(a). No stipulation is in place and Memry and
10 STC have not sought a court order increasing that number, therefore KOT's
11 motion is granted in this respect.
- 12 2. The court finds that KOT has taken nine depositions to date. KOT's cross-
13 examination of L. MacDonald Schetky in the deposition noticed by Memry does
14 not count toward KOT's total. KOT's deposition of Phillipe Poncet in his
15 individual capacity does count toward the total, despite the fact that KOT was
16 also deposing him as a Rule 30(b)(6) witness
- 17 3. If Barrie Hart is not available for more than one seven-hour day of deposition,
18 Memry and STC are entitled to 3.5 hours to examine him and KOT is entitled to
19 3.5 hours to cross-examine him.

20
21 **IT IS SO ORDERED.**

22
23 Dated: 2/2/07

/s/ Howard R. Lloyd
HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 THIS SHALL CERTIFY THAT A COPY OF THIS ORDER WILL BE SENT TO:

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15 * Counsel are responsible for providing copies of this order to co-counsel.

16 Dated: 2/2/07

17 /s/ JMM

18 Chambers of Magistrate Judge Lloyd